IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4855 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEWTON KELEVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4855 of 1990

MR JD AJMERA for Petitioner No. 1

MRS HARSHA DEVANI, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/02/2004

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India praying for

quashing and setting aside the order passed by the respondent No.1 i.e. Secretary, Education Department granting permission to the respondent No.3 to open a new secondary school at Village Bapodar, Tal. Ranavav, Dist. Junagadh. The petitioner has also prayed for interim relief seeking suspension of the operation and implementation of the order passed by the respondent No.1 granting permission to respondent No.3 school Management to open a new secondary school.

2. This petition was admitted on 19.12.1991. However, no interim relief was granted. It is the case of the petitioner that the petitioner was running the said secondary school for the last 10 years. It has one class of each of Std. VIII, IX and X and with great difficulty and after lot of hardships, the petitioner Trust raised the funds to run a school and constructed a building. The petitioner has also established a laboratory. It was difficult for the school to get adequate number of students so as to get grant from the Government. It is further stated that under the Gujarat Secondary Education Act, 1972, a procedure is prescribed for opening a new secondary school. Section 32 of the said Act deals with registration. It also provides that no person shall impart secondary education through a school unless the said school is registered under the provisions of the Act and procedure is also provided by Section 31 of the Act. It is further stated that the State Government has framed regulations in exercise of powers conferred by the Act, which are known as Gujarat Secondary Education Regulations, 1974. There are conditions which are to be fulfilled before the School is registered by the Board. The respondent No.3 Trust applied to the respondent No.2 Board to grant permission to open a new school. The petitioner has come to know that the Board did not find that there is any necessity to open a new school and must have also felt that the requirement of provisions of the Regulations were not satisfied and, therefore, permission to the respondent No.3 was not granted. However, the respondent No.3 management had preferred an appeal under Section 31 of the Act and though the petitioner was vitally interested in the outcome of the said appeal and though the petitioner has raised objection against granting of permission to open a new school to the respondent No.3 management, the petitioner was not joined as a party. The petitioner has also come to know that the Govt. has granted permission to the respondent No.3 to open a new school and being aggrieved by the said decision of the respondent No.1, the present petition is filed under Article 226 of the Constitution of India.

3. Mr. J.D. Ajmera, learned advocate appearing for the petitioner submits that the decision taken by the respondent No.1 is in violation of the principles of natural justice and though the petitioner was vitally affected and though the objections were raised by the petitioner, the petitioner was not heard before granting permission to the respondent No.3. He has further submitted that the decision taken by the respondent No.1 is in violation of the provisions of the Act as well as the Rules framed thereunder. Because of granting permission to respondent No.3, it was impossible for the petitioner's School to maintain average attendance of 23 students. The petitioner was, therefore, apprehending that they might not get grant from the Government. He has, therefore, submitted that the order passed by the respondent No.1 may be quashed and set aside.

4. Ms. Harsha Devani, learned AGP appearing on behalf of respondent No.1 has submitted that though the petitioner is challenging the order granting permission to the respondent No.3, no such order has been produced on record of this petition. She has further submitted that pursuant to the said order, the school was already started in the year 1990 and it is working smoothly. Hence, there is no question of causing any interference in the administration of the said school. She has further submitted that a letter was addressed on 15.07.1990 by the management of the said School and copy thereof is shown to the Court. It is at great length explained in the said letter as to how the said school is necessary in the best interest of the people residing in that area. It is further stated that the said School is very useful for girls education and that too for poor village people who cannot afford to go outside for the purpose of education. The petitioner has filed the petition with a malicious motive and just to create hinderance in the way of the respondent No.3. The respondent No.3 was not, in any way, by the opening of the said school causing any inconvenience to the petitioner and not a single student of the respondent No.3 has come from the petitioner's school. It was further stated that in no case, the strength of the student of the petitioner's school was less than 40 and hence, information given by the petitioner was totally misleading. It was further stated that there was distance of at least 5 kms. by bus route between the petitioner and respondent No.3 schools and hence, there won't be any objection to start new school. She has, therefore, submitted that there is no substance in the petition and hence, it is to be dismissed.

5. The respondent Nos.2 and 3 are duly served but nobody appears on their behalf.

6. Having regard to the facts and circumstances of the case and after having heard learned advocates appearing for the respective parties and considering the contents of the letter dated 15.07.1999 which was addressed to this Court, I am of the view that there is no reason to interfere in the order passed by the respondent No.1 granting permission to the respondent No.3. The permission was granted way back in 1989 and school was already started. From the facts on record, it appears that there was no violation of the statutory provisions contained in the Act or Rules framed thereunder. The petitioner has not made out any case which inspires the confidence of this Court in granting the relief prayed for in the petition. In this view of the matter, the Court is not inclined to entertain this petition while exercising its extra ordinary powers under Article 226 of the Constitution of India. The petition is accordingly dismissed. Rule is discharged without any order as to costs.

[K.A. PUJ, J.]

#Savariya#